



Overview of NAGPRA

Civil Penalties Procedures

Section 9 of NAGPRA (25 USC 3007) authorizes the Secretary of the Interior to assess a civil penalty against any museum that fails to comply with the requirements of the Act. Civil penalty procedures are codified at 43 CFR 10.12.

What constitutes a failure to comply with NAGPRA?

Your museum has failed to comply with the requirements of NAGPRA if it:

- (1) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not limited to, an unlawful sale or transfer to any individual or institution that is not required to comply with the Act (The term "unlawful" distinguishes between sales or transfers that violate provisions of the Act from sales or transfers for which the museum has right of possession); or
- (2) After November 16, 1993, has not completed summaries as required by the Act; or
- (3) After November 16, 1995, or the date specified in an extension issued by the Secretary, whichever is later, has not completed inventories as required by the Act; or
- (4) After May 16, 1996, or 6 months after completion of an inventory under an extension issued by the Secretary, whichever is later, has not notified culturally affiliated Indian tribes and Native Hawaiian organizations; or
- (5) Refuses, absent any of the exemptions specified in Sec. 10.10(c) of this part, to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian; or
- (6) Repatriates human remains, funerary objects, sacred objects, or objects of cultural patrimony before publishing the required notice in the Federal Register; or
- (7) Does not consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required; or
- (8) Does not inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

How do I report a failure to comply with NAGPRA?

Any person may bring an allegation of failure to comply to the attention of the Secretary. Allegations must be in writing, and should include documentation identifying the provision of the Act with which there has been a failure to comply and supporting facts of the alleged failure to comply. Documentation should include evidence that the museum has possession or control of Native American cultural items, receives Federal funds, and has failed to comply with specific provisions of the Act. Written allegations should be sent to the attention of the Director, National Park Service, 1849 C Street, NW, Washington, DC 20240.

What will occur after my allegation is received?

The National Park Service is delegated to provide support to the Secretary in the investigation of allegations of failure to comply with NAGPRA.

The NAGPRA Enforcement Coordinator in the National NAGPRA Program will organize these investigations, in collaboration with the Chief Ranger of the National Park Service, Office of the Solicitor, and Assistant Secretary for Fish and Wildlife and Parks. The NAGPRA Enforcement Coordinator will acknowledge receipt of the allegation to the complainant and provide a copy of the allegation to the museum.

Any museum that believes its compliance with NAGPRA is in question may contact the Manager of the National NAGPRA Program to request technical assistance to ensure the museum meets its statutory and regulatory responsibilities. This is a matter separate from the enforcement action. While subsequent compliance with NAGPRA will not effect the Enforcement Coordinator's investigation of any allegation that the museum previously failed to comply, such efforts to mitigate the violation may be taken into account by the Assistant Secretary for Fish and Wildlife and Parks in determining the penalty amount.

What happens after the investigation is complete?

The Assistant Secretary for Fish and Wildlife and Parks will notify the museum of the results of the investigation, with a copy sent to the complainant. The Assistant Secretary may determine that the museum has failed to comply with NAGPRA or that the evidence does not support the allegation.

What options are available to a museum that receives a written Notice of Failure to Comply?

A museum that receives a written Notice of Failure to Comply has three choices –

- (1) The museum may request informal discussions. The request for informal discussions should be made to the Enforcement Coordinator in the National NAGPRA Program in writing, and must be received within 45 days of the museum's receipt of the written Notice of Failure to Comply. Informal resolutions arrived at by the museum and the Enforcement Coordinator are subject to approval from the Assistant Secretary for Fish and Wildlife and Parks as a final disposition of the matter.
- (2) The museum may request an administrative hearing on the determination of failure to comply.
- (3) The museum may take no action and await the notice of assessment of a civil penalty.

What options are available to a museum that is assessed a civil penalty?

The Assistant Secretary for Fish and Wildlife and Parks determines if a penalty will be assessed after completing informal discussions or when the period for requesting a hearing expires. If a penalty will be assessed, the Assistant Secretary for Fish and Wildlife and Parks determines the penalty amount and sends the Notice of Assessment to the museum.

A museum that receives a Notice of Assessment has four choices –

- (1) The museum may accept the proposed penalty and pay the penalty as assessed.
- (2) The museum may request informal discussions with the Assistant Secretary for Fish and Wildlife and Parks.
- (3) The museum may file a petition for relief to the Assistant Secretary for Fish and Wildlife and Parks.
- (4) The museum may request an administrative hearing on the amount of the penalty.